

**COMMUNITY FACILITIES AND COST REIMBURSEMENT AGREEMENT  
FOR  
WET POND IMPROVEMENTS**

**DATE:    MAY \_\_\_\_ 2009**

This COMMUNITY FACILITIES AND COST REIMBURSEMENT AGREEMENT FOR WET POND IMPROVEMENTS (the "**Agreement**") is made by and between the **CITY OF AUSTIN, TEXAS**, a Texas home rule municipal corporation organized and operating under Chapter 9, Texas Local Government Code and located in Hays, Travis and Williamson counties, Texas (the "**City**"), and **RIVERSIDE INTERESTS, L.P.**, a Texas limited partnership (the "**Developer**"). The City and Developer are each sometimes referred to individually herein as a "**Party**" and collectively as the "**Parties**."

**RECITALS**

**WHEREAS**, Developer has a tract of land comprising approximately 4.46 acres, located in Travis County, Texas at 2301 East Riverside Drive near the intersection of East Riverside Drive and Willow Creek Drive, as more particularly described in **Exhibit "A"** (the "**Property**").

**WHEREAS**, Developer currently has filed Site Plan No. 2006-0188C with the City (and the City has issued Site Plan Permit No. SP-2008-0188C) (the "**Site Plan**") and intends to develop a mixed-use development on the Property that may include, but not necessarily be limited to, residential, retail, office, and non-commercial uses as well as wet pond improvements which will drain approximately 103 areas of untreated off-site watershed flow (with future impervious cover for the off-site watershed projected at 65%) through the Property into Lady Bird Lake to provide water quality control, extended detention for erosion control and storm detention for flood control, as generally depicted on **Exhibits "B-1" and "B-2"** (the "**Project**").

**WHEREAS**, in connection with obtaining the Site Plan, City ordinances require the completion of certain drainage improvements to protect the health, safety and general welfare of the community and Developer determined that development of wet pond improvements will address the drainage requirements of the Project.

**WHEREAS**, Developer also determined that it was in its best interest to oversize the wet pond improvements, create a wet pond that will enhance the water quality within the Lady Bird Lake watershed and allow public water in the vicinity of the Project to drain into the wet pond improvements in exchange for reimbursement by the City for certain costs associated with development of certain wet pond improvements and the creation of increased capacity of improvements to anticipate other future development in the area.

**WHEREAS**, the City and Developer currently intend to design and construct certain wet pond improvements oversized to create increased capacity in anticipation of other future

development in the area that will be located in the drainage easement granted to the City under Document No. 2009010702 of the Real Property Records of Travis County, Texas, and as shown on **Exhibit "G"**, including walls, culverts, weirs, pipes, outlet structures, liner system, vegetative bench and other components, together with other related landscaping amenities, as applicable, in accordance with applicable City standards, the Drainage Criteria Manual, and the Environmental Criteria Manual, and subject to City review and approval in the location and as shown on **Exhibit "C"** (the "**Improvements**").

**WHEREAS**, the City has determined that it will derive a benefit from construction of the proposed Improvements in accordance with the terms of this Agreement and the requirements in Texas Local Government Code Chapter 212, subchapter C (*Developer Participation in Contract for Public Improvements*).

**WHEREAS**, the Parties presently desire to coordinate the development and construction of the Improvements in connection with the development and construction of the Project.

**WHEREAS**, the City has allocated funding (the "**Funding**") for the design and construction of the Improvements.

**WHEREAS**, the City will reimburse Developer from the Funding a percentage of the cost of construction of the Improvements.

**NOW, THEREFORE**, in consideration of these premises, the mutual covenants set forth herein and other good and valuable consideration, the receipt and sufficiency of which both parties acknowledge, the City and Developer agree as follows:

## **Article 1   DEFINITIONS AND INTERPRETATION**

### **Section 1.01   Additional Definitions.**

A.    Bidding Documents means the Plans and Specifications together with the proposed Construction Contract for the Improvements.

B.    Construction Contract means the construction contract executed between Developer and Contractor for the construction of the Improvements.

C.    Contractor means the lowest responsible bidder with whom Developer contracts for the construction of the Improvements.

D.    Drainage Criteria Manual means the City of Austin Drainage Criteria Manual approved by the Austin City Council, as amended from time to time.

E.    Effective Date means the date of execution of this Agreement.

F. Engineer means the engineer hired by Developer, in Developer's discretion on the basis of a qualifications-based selection process, to undertake the tasks described in Section 3.02 of this Agreement.

G. Environmental Criteria Manual means the City of Austin Environmental Criteria Manual approved by the Austin City Council, as amended from time to time.

H. Force Majeure means and refers to acts of God; strikes, lockouts or other industrial disturbances; acts of public enemies; orders of any kind of the government of the United States, the State of Texas, or any other civil or military authority; insurrections; riots; epidemics; landslides; earthquakes; lightning; fires; hurricanes; storms; floods; washouts; or other natural disasters; arrests; restraint of government and people; civil disturbances; explosions; breakage or accidents to machinery, pipelines or canals; or other causes not reasonably within the control of the Party claiming such inability.

I. Notice means any formal notice or communication, request, reply or advice required or permitted to be given by one Party to another Party by this Agreement.

J. Plans and Specifications mean plans and specifications prepared by the Engineer for the construction of the Improvements as described herein and acceptable in all respects to the City, such acceptance noted in writing on the plans and specifications.

K. Substantial Completion means that the Improvements have been completed in strict accordance with the Plans and Specifications and are usable for the purpose intended, as certified by the Engineer to the City and as determined by the City in the ordinary course of its inspections of such Improvements.

L. Transportation Criteria Manual means the City of Austin Transportation Criteria Manual approved by the Austin City Council, as amended from time to time.

**Section 1.02 Interpretation of Terms, and Incorporation of Exhibits.** Except where the context otherwise clearly requires, in this Agreement:

A. Words imparting the singular will include the plural and vice versa;

B. All exhibits attached to this Agreement are incorporated by reference for all pertinent purposes as though fully copied and set forth at length in the Agreement; and

C. References to any document means that document as amended or as supplemented from time to time; and references to any party means that party, its successors, and assigns, if permitted by the Agreement.

**Section 1.03 Compliance with Certain City Bidding Requirements.** Notwithstanding any provision of this Agreement to the contrary, Developer's obligation to comply in the same manner as the City must comply with the City's minority-owned and women-owned business enterprise procurement program set out in Article 2-9, Austin City Code, or any other similar law

or regulation, including any provisions requiring award of a construction contract to a low bidder or any other particular bidder, shall apply only in the context of construction of the Improvements that are subject to reimbursement by the City as set out in this Agreement. In all other aspects of construction of the Project, Developer may choose its consultants, contractors, and other agents in its sole and absolute discretion, provided, however, that Developer is aware of and may consider the City's Minority and Women's Business Ordinance in making its decisions regarding other aspects of construction of the Project.

## **Article 2 DEVELOPER AUTHORITY AND RESPONSIBILITY**

**Section 2.01 Required Information.** Within 30 calendar days of the Effective Date of this Agreement, Developer must provide the City with appropriate evidence of authority authorizing Developer's execution and performance of this Agreement. The Parties understand and agree that this requirement is a condition precedent to the receipt of any benefits from the City under the term of this Agreement and that the City has no obligation to proceed with the terms of this Agreement unless and until this requirement is met.

### **Section 2.02 Design and Construction Responsibility.**

A. Notwithstanding any other provision in this Agreement to the contrary, Developer's responsibility to design and construct the Improvements is contingent upon the following pre-construction conditions: Filing for record in the real property records of Travis County, Texas the Restrictive Covenant Regarding the Maintenance of the Pond attached, acceptable to the City and substantially in the form shown on **Exhibit "D"** (the "**Restrictive Covenant**").

B. Notwithstanding any other provision in this Agreement to the contrary, Developer's obligation to construct and maintain the Improvements is contingent upon its commencement of construction of the Project. Once commenced, Developer shall diligently prosecute the construction of the Improvements to completion.

## **Article 3 ENGINEERING DESIGN OF THE IMPROVEMENTS**

**Section 3.01 Agreement to Design the Improvements.** The City and Developer agree that the Improvements shall be designed by Developer in accordance with the applicable portions of the City's written, published requirements of the City Code and City rules and regulations in effect on the date of this Agreement, specifically including but not limited to the Transportation Criteria Manual, Environmental Criteria Manual and Drainage Criteria Manuals and as further described in this Agreement (the "**City Standards**").

**Section 3.02 Design Duties of Developer.** Developer shall:

A. engage the services of an Engineer to perform the following functions, including necessary modeling studies and preliminary plans previously developed by Renaissance Engineering Group:

- (1) prepare Plans and Specifications for the Improvements using (and ensure that the Plans and Specifications conform to) the City's design criteria and City Standards applicable to the Improvements; prepare preliminary schedules and cost estimates for the construction of the Improvements; the Engineer's opinion of construction costs shall be based on materials and labor prevailing at the time of the preparation of the preliminary estimate without consideration of inflationary increases in costs with the understanding that the Engineer will not be construed to have guaranteed costs of construction, however, if either of the Parties believe that the estimates are no longer accurate, Developer will promptly obtain a revised opinion of construction costs with estimates of more accurate construction costs together with a description of the variance between the original and revised construction costs;
- (2) provide the City with a copy of the draft Bidding Documents;
- (3) if requested, attend and conduct pre-bid conferences to provide clarification and interpretation of the Bidding Documents to bidders;
- (4) if requested, prepare and issue addenda required to clarify the Bidding Documents;
- (5) if requested, attend the opening of bids at City's Contract Compliance Section, review bids, and furnish a recommendation regarding the award of the Construction Contract within five working days following the bid opening;
- (6) review and approve (or take other appropriate action regarding) shop drawings and samples, the results of tests and inspections and other data that the Contractor is required to submit for conformance with the design criteria and standard specifications of the Improvements and compliance with the information given in the construction documents for the Improvements;
- (7) determine the acceptability of substitute materials and equipment proposed by Contractor; and receive and review (for general content as required by the applicable specification) maintenance and operating instructions, schedules, guarantees, bonds and certificates of inspection which are to be assembled by Contractor in accordance with the construction documents for the Improvements;
- (8) review change order requests relating to the Improvements and submit the change order requests along with recommendations to the City for review and approval by the City. Change orders will be reviewed and approved or rejected by the City following submittal, provided, if more information is required for the City review, the City will notify Developer of the additional information needed;

- (9) review any changes to the Improvements and, if necessary, design any engineering changes that may be required after construction has begun;
- (10) attend the final inspections of each portion of the Improvements in the presence of the City inspector and transmit a list of items to be completed or repaired to the City, Developer, and the Contractor;
- (11) review the Plans and Specifications of the Improvements marked to show "as built" conditions to ascertain to the best of his knowledge and belief that the reflected field changes are substantially complete and correct; and
- (12) after final completion of the Improvements, submit as-built documents to the City, consisting of an electronic file, one set of mylar and two sets of one-half size print record Plans and Specifications to the City certified "As Built" by the Engineer. Copies of the Project record Plans and Specifications that may be relied upon by the City are limited to the printed copies that are signed and sealed by the Engineer; record Plans and Specifications on electronic files that are furnished by the Engineer to the City are only for the convenience of the City.

B. ensure that the Plans and Specifications:

- (1) strictly conform to all applicable City design criteria and construction and material standards, as contained in the applicable City ordinances and regulations, including the Transportation Criteria Manual, Environmental Criteria Manual and Drainage Criteria Manual, for the Improvements to be constructed by Developer; and
- (2) are accompanied by appropriate engineering reports, as required by the City, including the liner quality assurance/quality control plan requirements with respect to the liner installation and verification of completion of the liner evaluation report in accordance with the Environmental Criteria Manual, Section 1.6.2.

C. engage the services of a duly qualified and experienced consultant or a duly qualified and experienced Developer employee or employee of a Developer affiliate to act as a professional construction manager (the "**Construction Manager**") to work with the Engineer in connection with Engineer's tasks, as appropriate, and to act as a liaison with the City and with subcontractors. The City will recognize the Construction Manager as the single point of contact with Developer during the construction of the Improvements for the purposes of daily communication, resolution of routine construction matters, and construction contract administration, including but not limited to the purpose of receiving payments from the City pursuant to this Agreement.

D. make timely payments for work properly performed in connection with the design, construction management and contract administration of the Improvements in accordance with the terms of the applicable professional services agreements.

## **Article 4 CONSTRUCTION OF THE IMPROVEMENTS**

### **Section 4.01 Agreement to Construct the Improvements**

A. Developer will submit the Plans and Specifications for the Improvements prepared by the Engineer at logical points in the development of the design to the City for review and approval. The City will perform interim design reviews of the Plans and Specifications and provide any written comments to Developer within ten working days of submittal, unless additional time will be required due to the requirement of reviews by multiple City departments or additional time will be required in connection with the Site Plan or permit review and approval process. In the event that such additional time is required, the City will notify Developer in writing of the additional time requested for the review, which may not exceed an additional twenty working days for the review of interim design submittals or the additional time required for the Site Plan review and approval process. Once approval is obtained, no material changes may be made to the Plans and Specifications without following the change order procedure described in Section 3.02A(8) hereof.

B. The City will perform Site Plan and permitting reviews in a timely manner and in accordance with City requirements, including but not limited to Section 25-5-114 of the City Code.

C. After approval of the Plans and Specifications and, subject to reimbursement as described in this Agreement and subject to all of the other terms and conditions of this Agreement, Developer agrees to construct the Improvements.

D. Subject to reimbursement as described in this Agreement, Developer agrees to construct the Improvements in a good and workmanlike manner and strictly in accordance with the Plans and Specifications and all applicable laws, regulations, and ordinances, including (but with respect only to those Improvements that are subject to reimbursement under Section 5.02 hereof) the City's MBE/WBE requirements.

E. Developer, or any other acceptable agent that City approves in writing, will serve as the Construction Manager.

### **Section 4.02 Schedule of Construction and Extensions.**

A. Developer will construct the Improvements on a timely basis as is needed in connection with the development of the Project and adjacent public infrastructure, provided however, the construction by the Contractor must:

- (1) start on or before **six (6) months** following the Effective Date of this Agreement;

(2) once started, make continuous progress toward completion without interruption for a period of more than 30 calendar days without approval in writing by the City; and

(3) be completed on or before **two (2) years** next following the Effective Date of this Agreement.

B. Developer will begin construction of the Improvements during the construction of the development of the Project.

C. The date for start and completion of the Improvements will be automatically extended due to events of Force Majeure for the same number of days the event of Force Majeure lasted and, with the written approval of the City, for other good cause for a period of time mutually agreeable to the Parties.

**Section 4.03 Construction Duties of Developer.** Subject to all of the terms and conditions of this Agreement, including, without limitation, Section 1.03 hereof (limiting the applicability of the City's minority-owned and women-owned business enterprise procurement program), Developer (or Developer's Engineer, Construction Manager, or other agent) will:

A. solicit public invitations for bids for the construction of the portion of the Improvements subject to reimbursement, following all applicable state laws and regulations and City Codes, regulations and procedures following the same procedures and requirements the City must adhere to in competitively bidding its construction contracts. This requirement includes compliance in the same manner the City complies with the minority-owned and women-owned business enterprise procurement program found in Chapter 2-9 of the City Code and Chapter 252 of the Texas Local Government Code or at the option of Developer, substantial compliance with the requirements of Section 271.116 of the Texas Government Code and the other applicable provisions of the Texas Government Code related to competitive sealed proposals for similar improvements, which may be constructed for less than \$1,500,000.00;

B. prepare the Construction Contract to strictly comply with the Plans and Specification and all applicable laws, regulations, ordinances, City procedures, and the terms of this Agreement. The Construction Contract must include general conditions which include the following provisions:

(1) warranties, and insurance, payment and performance bonding requirements, as more fully set forth in **Exhibit "E"** hereto;

(2) include the City as an approved future assignee to the Construction Contract, together with the applicable Plans and Specifications, with the ability of the City, as assignee, to complete the Improvements if Developer fails to complete the Construction Contract; and

(3) certificates of insurance evidencing that the required insurance has been obtained and that the City has been designated as an additional insured under



Endorsement CG2010 (or equivalent approved by the City Risk Manager) with respect to all liability coverages to the extent allowed by law;

C. award the Construction Contract to the lowest responsible bidder (who is duly qualified and can meet the construction schedule) for those Improvements that are subject to reimbursement under this Agreement following construction contract competitive bidding procedures set forth in Section 4.03A of this Agreement, as applicable. Prior to entering into any other contract for the provision of construction, demolition, material generation or non-professional services (eg., services other than design, surveying, etc.) to satisfy Developer obligations hereunder, Developer will in good faith solicit bids for such items from at least three qualified entities, review all timely submitted bids in good faith and select the entity to provide such item which in Developer discretion represents the best overall value for the Improvements taking into account all relevant factors and circumstances or will use the process set forth in Section 271.116 of the Code and select the entity providing the "best value," taking into consideration the enumerated evaluation criteria;

D. obtain and pay for all required permits, consents, easements, inspections, tests, and authorizations necessary for construction of the Improvements; provided, however, that the City will cooperate with Developer in obtaining those items listed herein;

E. provide the City with a copy of the Construction Contract and any additional documents pertaining to the Construction Contract on or about the time they have been signed, and thereafter provide copies of any documents amending or replacing any of said documents;

F. submit all changes to the Plans and Specifications and change orders to the Construction Contract to the City for its review and written approval prior to the commencement of any work incorporating the change, which approval will not be unreasonably withheld or delayed;

G. make timely payment to the Engineer and Contractor for work properly performed concerning the Improvements in accordance with the terms and provisions of the applicable contract with the Engineer or the Construction Contract (including any provisions related to statutory retainage and withheld amounts due to improper work or punch list items);

H. arrange and coordinate materials testing with each Contractor and provide the City with all testing information; if the City determines that the work needs to be corrected or rejected or requires special testing because of unforeseen circumstances, the City will promptly notify Developer and Developer will take appropriate action to remedy the identified problem;

I. reject all work found not to conform to minimum requirements of the Construction Contract and the applicable Plans and Specifications, and advise the Engineer and the City of work that Developer determines should be corrected or rejected or which requires special testing, adjustment, or inspection for approval;

J. arrange and observe with the Contractor all acceptance testing, if applicable, for the Improvements and notify the City and the Engineer of the schedule and results of the testing;

K. maintain master job files of correspondence, reports of conferences, shop drawings, samples, reproductions of the applicable Plans and Specifications, change order, addenda, daily inspection reports, additional or revised drawings, and other related construction documents for the Improvements;

L. coordinate the preparation of letters indicating Substantial Completion for the Improvements with the Engineer, together with the submission to the Contractor of a list of observed items requiring completion or correction;

M. ensure access and permit the City to inspect the construction of the Improvements at all reasonable times during construction until final acceptance of the Improvements by the City;

N. conduct and coordinate final inspection of the Improvements with the Engineer and the City inspector; transmit a final list of items to be completed or repaired, if any, and observe Contractor correction of the same;

O. prepare and submit to the City monthly during construction of the Improvements a report regarding minority-owned and women-owned business enterprise participation in the construction of the Improvements;

P. notify the City when the Developer considers the Improvements to be substantially complete in order for the City to promptly inspect the Improvements, and, if the City determines in its sole discretion that the Improvements are substantially completed, issue to Developer City's final acceptance of the Improvements in writing, which acceptance will not be unreasonably withheld or delayed.

Q. within ten (10) calendar days after final completion and acceptance of the Improvements by the City in writing, provide the City with a detailed report in a form acceptable to City of the total costs of the Improvements; and

R. within thirty (30) calendar days after final completion and acceptance of the Improvements by the City in writing, provide the City with complete sets of the Plans and Specifications, certified "as-built", by the Engineer in accordance with the requirements of this Agreement. The City's acceptance of the Improvements shall be governed by this Agreement and the requirements of the City Code. As a condition of final acceptance of the Improvements by the City, Developer will provide the City with:

(1) an assignment to the City of all warranties, guarantees, maintenance bonds, or like assurances of performance applicable to the Improvements, but not to Developer's Project, after final acceptance by the City;

(2) copies of separate books of accounts, confirming the total costs of the Improvements and accurately documenting costs and expenses incurred in connection with the Improvements; and

(3) a written, sealed statement from the Engineer certifying that the Improvements have been constructed in accordance with the Plans and Specifications (subject to approved change orders); and

S. conduct all required wet pond maintenance for the Improvements in perpetuity as required under Austin City Code, Section 25-8-231, as the Code is amended from time to time, including the requirements of the City Environmental Criteria Manual, Section 1.6.3, and the Restrictive Covenant.

**Section 4.04 Duties of the City.** The City will:

A. review the Plans and Specifications, in a timely manner as set forth in Section 4.01 above, for compliance with the requirements of this Agreement and applicable City procedures and Standards, and will approve all Plans and Specifications that comply with these requirements, within a reasonable period of time after submission;

B. inspect the Improvements within three (3) working days for an interim inspection and ten (10) working days for a final inspection after a request for inspection is received, and, if completed in accordance with the terms of the Plans and Specifications and this Agreement, will certify the Improvements as being in compliance with City Standards. The inspections and certifications will be conducted in accordance with standard City policies, procedures, and requirements. The Developer grants to City an irrevocable license to enter the Property for the purpose of conducting these inspections;

C. provide timely written Notice to Developer whenever a completed inspection reveals that an item of the Improvements is not constructed or completed in accordance with the Plans and Specifications or is otherwise defective. The Notice will specifically detail any deficiencies. The foregoing notwithstanding, inspection of construction by the City is not a guaranty that construction of the Improvements is free from defects or complies with all applicable laws;

D. provide a final acceptance letter accepting as complete the construction of the Improvements (the "**Letter of Acceptance**") after determination by the City that all construction deficiencies noted during the final on-site inspection have been corrected for the Improvements, and that the requirements set forth in this Agreement for acceptance of construction, have been met. Acceptance of the completed Improvements is final only upon issuance of the Letter of Acceptance by the City and the date of the Letter of Acceptance will be the effective date of "completion" for the purposes of this Agreement; and

E. reimburse Developer for the engineering design and construction costs of the Improvements, in accordance with the provisions of Article V of this Agreement.

**Section 4.05 City's Right to Construct Improvements on Default of Developer.**

A. If Developer begins but does not complete construction of the Improvements in accordance with the Plans and Specifications and the terms and provisions in this Agreement, the City has the right, but not the obligation, to complete the construction of the Improvements.

B. If the City elects to complete the Improvements, all plans, designs, easements, real and personal property, and Improvements produced or installed by Developer or its Engineers or Contractors within the City's property prior to the take over of construction of the Improvements by the City, will become the property of the City.

C. Developer grants to the City a nonexclusive right and easement to enter the Property to the most limited extent as may be necessary for the purpose of performing Developer's construction obligations pertaining to the Improvements under this Agreement in accordance with its terms and provision and in accordance with the notice and cure periods contained in this Agreement.

D. If Developer is terminated pursuant to this Agreement, the City will reimburse Developer for its prorata share of the work performed in accordance with the plans and specifications and the terms of this Agreement to the date of such termination, subject to the receipt of acceptable close-out information, including the contractor's invoice for services rendered to the date of termination.

## **Article 5 COSTS AND REIMBURSEMENT**

**Section 5.01 Developer's Responsibility for Improvements Costs.** Developer will pay all costs associated with the design and construction of the Improvements in a timely manner as provided in this Article V.

**Section 5.02 Cost Reimbursement.** The total sum of cost reimbursement available from the City to the Developer for designing and constructing the oversized Improvements (required by the City to increase the capacity of the Improvements in anticipation of other future development in the area under the terms of this Agreement) is the lesser of (a) the total eligible costs of the Improvements that are specified in the attached **Exhibits "F-1" and "F-2"** and incurred by the Developer as determined by the City in accordance with Section 5.03 of this Agreement after Developer has constructed the Improvements and the City has issued a Letter of Acceptance of the Improvements, or (b) an amount not to exceed **SIX HUNDRED TEN THOUSAND, FIVE HUNDRED NINETEEN AND NO/100 DOLLARS (\$610,519.00)** without further authorization by the Austin City Council.

### **Section 5.03 Report of the Project Costs Required.**

A. Prior to issuing the Letter of Acceptance of the Improvements, Developer will submit a report to the City of the total costs of the Improvements that includes all supporting information. Developer agrees to provide all information and documents in its possession or

immediate control required by the City for proper processing and for accurate accounting and documentation of actual Improvement costs.

B. The City will verify and determine the final total eligible cost amount (eligible costs are hard construction costs and costs for engineering and design approved in accordance with the provisions of this Agreement, and do not include financing, accounting, project management, inspection, and legal expenses incurred by the Developer to complete the Improvements) and will certify the amount payable to the Developer for the Improvements. If the City determines that the amount payable to the Developer is the same as the amount submitted by Developer, the City will have 60 calendar days after the later of receipt of all supporting information or the date of the Letter of Acceptance to make the payment to Developer. If the City determines that the amount owing to Developer is less than the amount submitted by Developer, the City will: (i) notify Developer of the discrepancy within forty-five (45) calendar days of Developer's submittal to the City; (ii) provide Developer with all supporting documentation upon which the discrepancy is based; and (iii) work diligently and in good faith to resolve the discrepancy within the ensuing ten (10) working days.

C. If Developer allows work to commence on a change order that effects a material change of the Plans and Specifications for any approved phase before receiving the approval of the applicable City department(s) for the change order, any additional costs incurred on that change order may not be eligible for reimbursement, if the City in its sole discretion determines that the change in the Project is materially unacceptable.

D. In any event, subject to the applicable not to be exceeded amount and notwithstanding anything to the contrary contained herein, the City will reimburse Developer the amounts not in dispute then payable to Developer.

## **Article 6 OWNERSHIP AND MAINTENANCE OF IMPROVEMENTS**

**Section 6.01 Conditions for Developer Ownership and Maintenance of the Improvements.** After the City issues a Letter of Acceptance, Developer, at its sole cost and expense, will own and be obligated to perform all ordinary and ongoing maintenance responsibilities for the Improvements in perpetuity in accordance with all applicable governmental and regulatory laws, including City ordinances and regulations, the requirements of Section 4.03S of this Agreement and the Restrictive Covenant.

### **Section 6.02 Warranty.**

A. Upon substantial completion of the Improvements and as a condition precedent to final acceptance by the City, Developer will transfer to the City all warranties for the Improvements, including the Contractor's one year warranty and any warranty bond and any other warranty or rights Developer has in connection with the Plans and Specifications as they relate to the Improvements, excluding any portion of such warranty pertaining to Developer's Project not including the Improvements.

B. Developer will be responsible for any damage to the Improvements accepted by the City and for the operation and maintenance of the Improvements.

**Section 6.03 No Liens Permitted.** Developer will make timely payment for all aspects of properly performed engineering, design, construction work (including inspection fees), and for all materials and services relating to the Improvements in accordance with the applicable Construction Contract(s) and design services contracts for the Improvements. Developer will not suffer or permit the filing, perfection, or execution of any lien or encumbrance on the Improvements, and will cause any such lien to be released of record by payment, deposit, bond, or order of court of competent jurisdiction. Developer will have the right to contest any claim asserted in connection with the design and construction of the Improvements described herein, including the right to contest such claim in any court of competent jurisdiction. Developer shall secure the release within ninety days of the recordation of any lien or encumbrance. The foregoing notwithstanding any lien disputed by Developer may be bonded, as applicable, by the payment and performance bonds provided by the Contractor for the Improvements or otherwise bonded or secured by other fiscal, including a letter of credit, acceptable to the City Law Department within sixty (60) calendar days of its recordation.

**Section 6.04 Agreement May be Pledged as Collateral.** Developer may pledge this Agreement as collateral for the purpose of securing financing from one or more lenders for the Improvements. Developer or its lender will provide documentation of the use of this Agreement as collateral to the City Law Department for its review and approval, which approval will not be unreasonably withheld or delayed. Except for the limitations in this Agreement, the Developer has the right to assign its rights under this Agreement to any lender holding liens against the Property, and the City specifically agrees to provide to any such lender the rights and benefits of this Agreement if the lender forecloses its liens or encumbrances against the Property.

## **Article 7 GENERAL PROVISIONS**

**Section 7.01 Interpretation of this Agreement.** This Agreement shall, in the event of any dispute over its meaning or application, be interpreted fairly and reasonably, and neither more strictly for or against either Party.

**Section 7.02 Notice and Addresses.** Any Notice in this Agreement provided or permitted to be given, made or accepted by either Party to the other must be in writing. Notice may, unless otherwise provided herein, be given or served (a) by depositing the same in the United States mail, postage paid, certified mail, and addressed to the party to be notified at the last address for which that the sender has at the time of mailing, with return receipt requested, (b) by delivering the same to such party, or an agent of such party, or (c) by facsimile properly addressed and machine generated confirmation of receipt is received. Notice deposited in the mail in the manner described above shall be effective two days after such deposit. Notice given in any other manner shall be effective only if and when received by the party to be notified. For the purposes of notice, the addresses of City and Developer for receipt of any notice in this Agreement are:

**DEVELOPER:**

Riverside Interests, L.P.  
Attn: Charlie Tames  
3111 Glenview

Austin, Texas 78703

Facsimile Number: 512 / 532-6203  
E-Mail Address: c@tamespartners.com

**CITY:**

City of Austin, Texas  
ATTN: Tom Frankie, Environmental Resource Mgt.  
WATERSHED PROTECTION AND DEVELOPMENT REVIEW  
DEPARTMENT  
505 BARTON SPRINGS ROAD (78704)  
P.O. Box 1088  
Austin, Texas 78767-1088

Facsimile Number: 512 / 974-2846  
E-Mail Address: tom.frankie@ci.austin.tx.us

With copy to:

City OF Austin, Texas  
Law Department  
Attn: James M. Williams, Sr.  
301 West Second Street (78701)  
P.O. Box 1088  
Austin, Texas 78767-1088

**Section 7.03 Notice of Default; Opportunity to Cure; Remedies**

A. Should any Party allege that the other has defaulted in the performance of any obligation under this Agreement, the Party will provide at least thirty (30) calendar days written Notice to the other Parties specifying the nature of the alleged default and provide the other Party a reasonable opportunity to cure the default before exercising any remedy related to the alleged default.

B. Upon the failure of either Party to comply with the provisions of this Agreement, which failure continues beyond any applicable grace or notice and opportunity to cure period, the other Party shall have the right to enforce the terms and provisions of this Agreement by specific performance, or by such other legal or equitable relief to which the non-defaulting Party may be entitled.

C. Any remedy or relief described in this Agreement shall be cumulative of, and in addition to, any other remedies and relief available at law or in equity.

**Section 7.04 Amendment.** No amendment of this Agreement will be effective unless the duly authorized representative of each Party has duly approved, reduced to writing, and signed the amendment by the authorized representatives of the Parties, which amendment will incorporate this Agreement in every particular not otherwise changed by the amendment.

**Section 7.05 No Third Party Beneficiaries.** Except as expressly provided in this Agreement, nothing in this Agreement will be construed to confer upon any person other than the Parties any rights, benefits or remedies under or because of this Agreement.

**Section 7.06 No Joint Venture, Developer, Agency.** This Agreement will not be construed in any form or manner to establish a joint venture or agency, express or implied, nor any employer-employee or borrowed servant relationship by and among the Parties hereto.

**Section 7.07 Severability.** The provisions of this Agreement are severable, and if any court will ever hold any word, phrase, clause, sentence, paragraph, section, or other part of this Agreement or the application of it to any person or circumstance of competent jurisdiction to be invalid or unconstitutional for any reason, the remainder of this Agreement and the application of such word, phrase, clause, sentence, paragraph, section, or other part of this Agreement to other persons or circumstances will not be affected by that and this Agreement will be construed as if it had never contained such invalid or unconstitutional portion therein.

**Section 7.08 Applicable Law; Venue.** This Agreement will be construed under and according to the laws of the State of Texas. Personal jurisdiction and venue for any suit arising under this Agreement will be in Travis County, Texas.

**Section 7.09 Counterparts.** The Parties may execute this Agreement in one or more duplicate originals each of equal dignity.

**Section 7.010 No Waiver.** No waiver of any provision of this Agreement will be deemed to constitute a waiver of any other provision or any other agreement between the Parties. No waiver of any provision of this Agreement will be deemed to constitute a continuing waiver unless expressly provided for by written amendment to this Agreement, nor will the waiver of any default under this Agreement be deemed a waiver of any subsequent defaults of the same type. The failure at any time to enforce this Agreement or any covenant by any Party, or their successors or assigns, whether the violations are known or not, shall not constitute a waiver or estoppel of the right to do so.

**Section 7.011 Governmental Authority.** Nothing in this Agreement will be construed to limit, restrict, modify, or abrogate the City's governmental authority or ordinances respecting the operation and maintenance of the Improvements constructed under the terms of this Agreement,



except as specifically waived or modified herein or by specific action of the City Council, nor its duty to provide for the public health, safety, and welfare in the operation and maintenance of the same.

**Section 7.012 Binding.** This Agreement shall be binding upon and inure to the benefit of the Parties and their representatives, successors, and assigns.

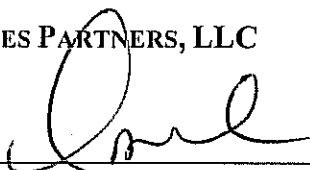
*{The remainder of this page is intentionally left blank, signatures on next page}*

THIS AGREEMENT is duly executed by the parties to the Agreement on the respective dates following each party's signature and is effective on the Date first above stated.

**Developer:**

**RIVERSIDE INTERESTS, L.P.**, a Texas limited partnership, acting by and through its General Partner, Tames Partners, LLC, a Texas limited liability company

**TAMES PARTNERS, LLC**

By:   
Name: Carlos Tames  
Title: Member

22-3952511

Developer Social Security or Tax ID Number

Date: 3/5/2009

**City:**

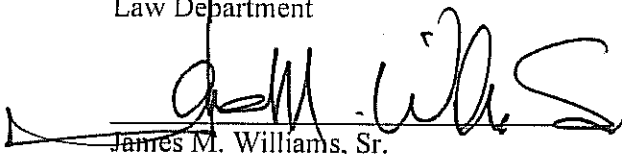
**CITY OF AUSTIN, TEXAS**, a Texas home rule municipal corporation organized and operating under Chapter 9, Texas Local Government Code

By: \_\_\_\_\_  
Name: Sue Edwards, Assistant City Manager  
Office of the City Manager

Date: \_\_\_\_/\_\_\_\_/2009

**APPROVED AS TO FORM:**

City of Austin  
Law Department

A handwritten signature in black ink, appearing to read 'James M. Williams, Sr.', is written over a horizontal line.

James M. Williams, Sr.

Assistant City Attorney

Texas State Bar Number 21549500

**Attachments:**

- Exhibit "A": Legal Description of Property
- Exhibit "B": Project
- Exhibit "C": Improvements
- Exhibit "D": Restrictive Covenant
- Exhibit "E": Insurance and Bond Requirements
- Exhibit "F-1" and "F-2": Cost Participation
- Exhibit "G": Approved and Recorded Drainage Easement documents

Legal Description of the Property

Being all of that certain 4.468 acre tract of land, more or less, out of the SANTIAGO DEL VALLE GRANT situated in Travis County, Texas, the same being conveyed to Riverside Interests, LP by Warranty Deed dated February 9, 2007, recorded under Document No. 2007024954 of the Official Public Records of Travis County, Texas. Said 4.468 acre tract of land being more particularly described by metes and bounds as follows:

**BEGINNING** at an iron rod found being the most Northerly corner of the said 4.468 acre tract of land and being a point on the Eastern **RIGHT-OF-WAY** of Willow Creek Drive and a point on the Southern **R-O-W** of Riverside Drive, point being the **POINT-OF-BEGINNING** of the herein described tract of land;

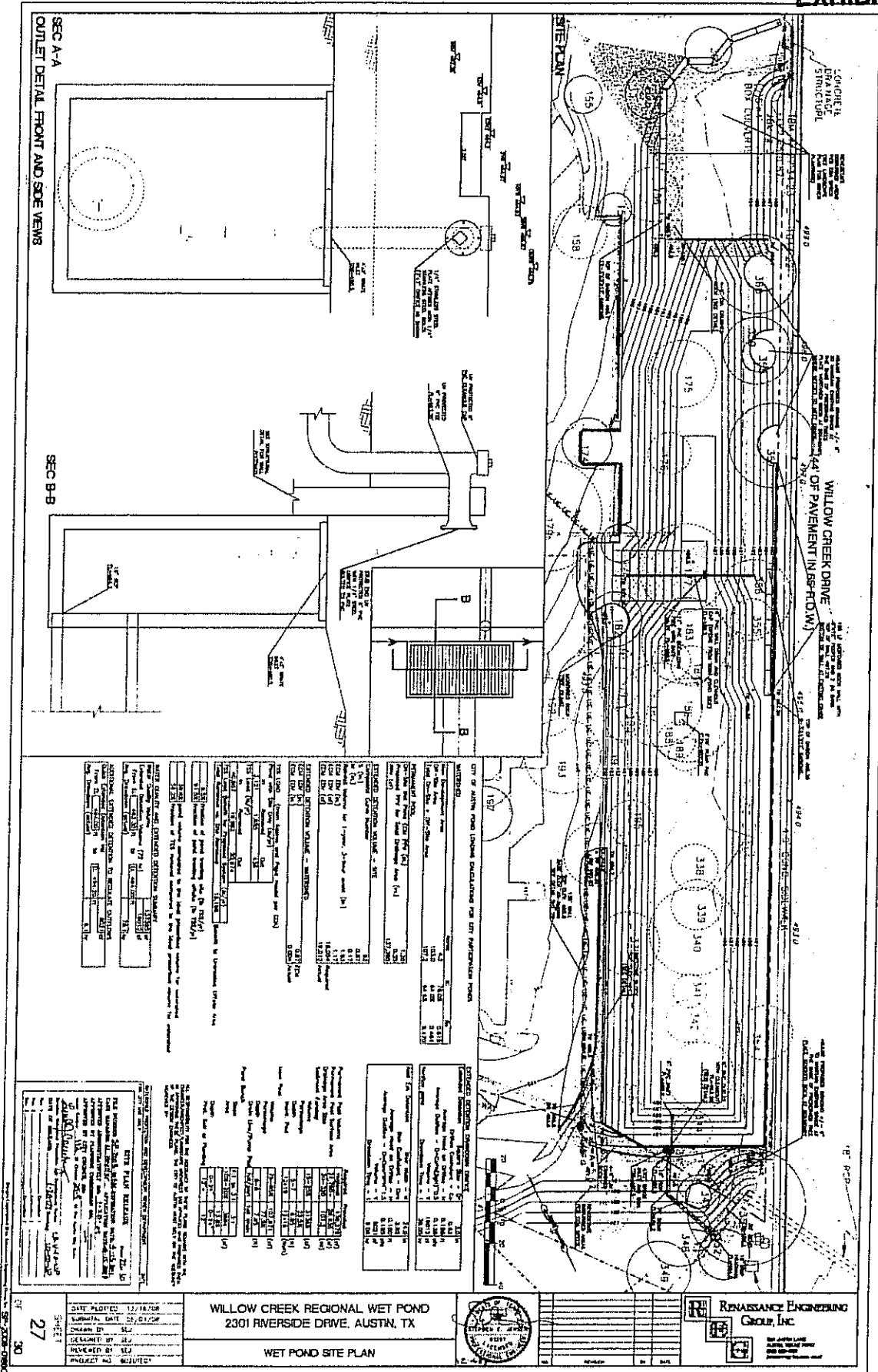
Thence following the said southern **R-O-W** of Riverside Drive and following a curve to the left having a chord bearing of  $S30^{\circ}51'58''E$ , a radius of 995.60 feet, a length of 78.91 feet and a chord distance of 78.89 feet to an iron rod set;

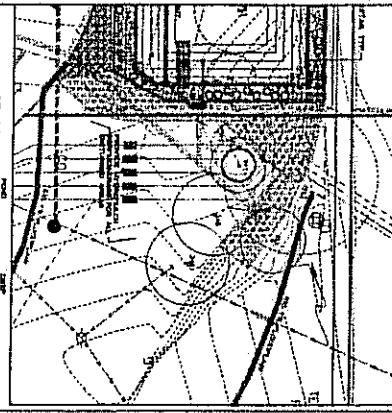
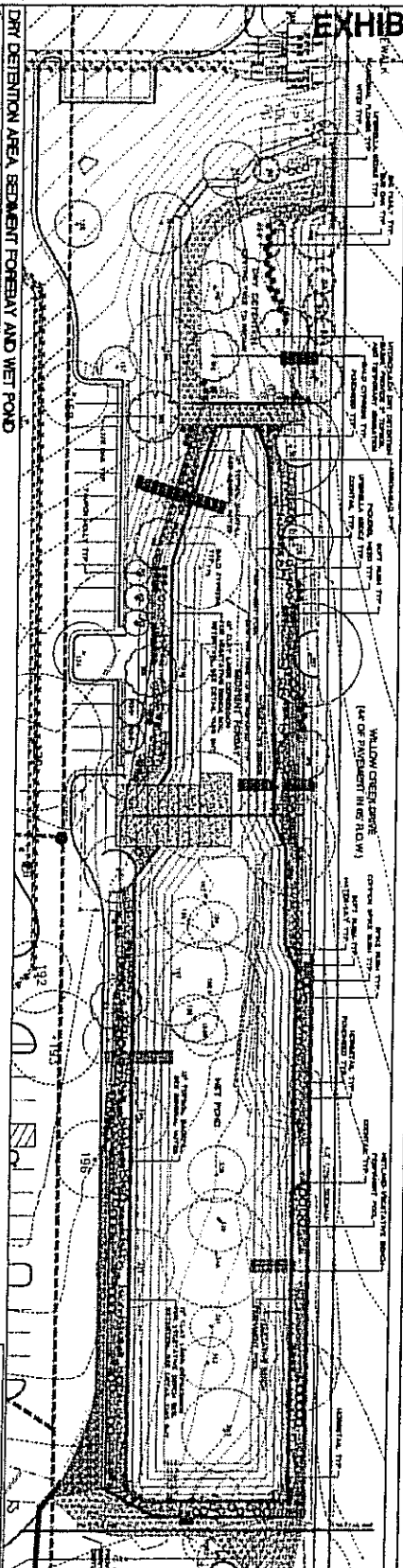
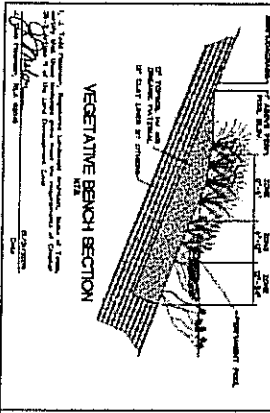
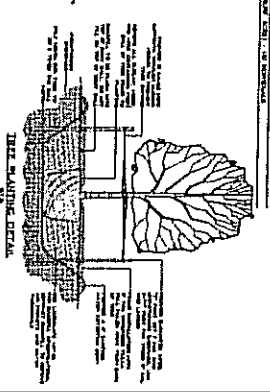
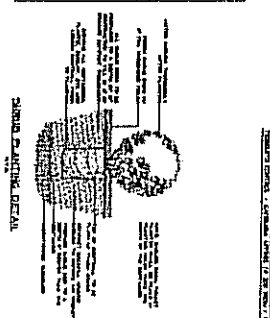
Thence  $S44^{\circ}31'57''E$  for a distance of 135.32 feet to an iron rod set, being the Northeast corner of the said 4.468 acre tract of land and point being the Northwest corner of that certain 9.733 acre of land conveyed to Collier Ranch Limited Partnership as recorded in Volume 13336, Page 764, of the official public records of Travis County, Texas;

Thence  $S27^{\circ}41'57''W$  following the common property line of the said 4.468 acre tract of land and said 9.733 acre tract of land for a distance of 962.49 feet to an iron rod set being the most Southerly corner of the said 4.468 acre tract of land and being on the Northern property line of that certain Willow Creek Subdivision Section 1-b as recorded in Volume 52 Page 18, of the official public records of Travis County, Texas;

Thence  $N62^{\circ}18'03''W$  following the common property line of the said 4.468 acre tract of land and the said Willow Creek Section 1-b, for a distance of 194.31 feet to an iron rod found being the most Westerly corner of the said 4.468 acre tract of land and being on the said **R-O-W** of Willow Creek Drive;

Thence  $N27^{\circ}35'48''E$  following the said **R-O-W** of Willow Creek Drive for a distance of 1044.93 feet to the **POINT-OF-BEGINNING** containing 4.468 acres of land more or less.



[illegible][illegible]

**MECONON DESIGN GROUP, INC.**  
LAND PLANNING & LANDSCAPE ARCHITECTURE  
4000 Highway 100, Suite 100, Dallas, TX 75243  
214/343-1111 Fax 214/343-1112  
www.meconon.com

UNIT LIST		UNIT NAME		UNIT TYPE		UNIT STATUS		UNIT LOCATION		UNIT COMMENTS	
UNIT ID	UNIT NAME	UNIT TYPE	UNIT STATUS	UNIT LOCATION	UNIT COMMENTS	UNIT ID	UNIT NAME	UNIT TYPE	UNIT STATUS	UNIT LOCATION	UNIT COMMENTS
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106	UNIT 106	106	106	106	106	106	106	106	106	106	106
107	UNIT 107	107	107	107	107	107	107	107	107	107	107
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202	UNIT 202	202	202	202	202	202	202	202	202	202	202
203	UNIT 203	203	203	203	203	203	203	203	203	203	203
204	UNIT 204	204	204	204	204	204	204	204	204	204	204
205	UNIT 205										



**Exhibit D**

**RESTRICTIVE COVENANT**  
**REGARDING THE MAINTENANCE OF WET POND AND DRAINAGE FACILITIES**

**EFFECTIVE DATE:** May \_\_\_\_ 2009

This Restrictive Covenant Regarding the Maintenance of Wet Pond and Drainage Facilities for Riverside (the "Restrictive Covenant") is executed by Declarant, and is as follows:

**GENERAL RECITALS:**

**DECLARANT:** RIVERSIDE INTERESTS, L.P., a Texas limited partnership

**DECLARANT ADDRESS:** 3111 Glenview  
Austin, Travis County, Texas 78703

**CONSIDERATION:** Ten and No/100 Dollars (\$10.00) and other good and valuable consideration paid by the City of Austin, Texas to the Owner, the receipt and sufficiency of which is acknowledged.

**PROPERTY:** Being all of that certain 4.468 acre tract of land, more or less, out of the SANTIAGO DEL VALLE GRANT situated in Travis County, Texas, the same being conveyed to Riverside Interests, LP by Warranty Deed dated February 9, 2007, recorded under Document No. 2007024954 of the Official Public Records of Travis County, Texas. Said 4.468 acre tract of land being more particularly described by metes and bounds on Exhibit "A" attached hereto.

A. Declarant owns land the Property.

B. Definitions.

1. Owners. The term "Owner" means, individually, and the term "Owners" means, collectively, Declarant and all future owners of the fee interest of any portion of the Property (whether such fee interest is obtained through a purchase from Declarant or through a purchase at a foreclosure sale or trustee's sale or through a deed in lieu of foreclosure) and their successors and assigns.
2. Facilities. The term "Facilities" means those wet pond and drainage facilities set forth on Exhibits "B-1" and B-2" attached hereto that convey and receive stormwater runoff and are located in the drainage easement granted to the City under Document No. 2009010703 of the real property records of Travis County, Texas (the "Easement Tract").

C. Declarant for the Consideration has agreed to impose these covenants and conditions for the benefit of the Property, and has agreed to accept the responsibility for maintaining the Facilities in accordance with the terms hereof.



NOW, THEREFORE, Declarant declares that the Property is subject to the following covenants, conditions and restrictions which run with the Property and bind all parties having right, title, or interest in or to the Property or any part, their respective heirs, successors, and assigns and inure to the benefit of each Owner. Each contract, deed or conveyance of any kind conveying all or a portion of the Property will conclusively be held to have been executed, delivered, and accepted subject to the following covenants, conditions and restrictions, regardless of whether or not they are set out in full or by reference in said contract, deed or conveyance.

### **SPECIFIC AGREEMENTS AND RESTRICTIONS:**

1. Recitals Incorporated. The above Recitals and all terms defined therein are incorporated into this Restrictive Covenant for all purposes.
2. Maintenance. The Owner will continuously maintain the Facilities in accordance with the requirements of the City and in a good and functioning condition. The Easement Tract on which the Facilities are located may not be used for any purpose inconsistent with or detrimental to the proper operation of the Facilities. Each Owner is jointly and severally liable for the maintenance of the Facilities.
3. Notice. The City shall give the Owner thirty (30) days' prior written notice of the City's intent to enter all or part of the Easement Tract for the purpose of inspecting, monitoring, operating, maintaining, replacing, upgrading or repairing, as applicable, the Facilities; provided, however, that in the event of an emergency, the City shall be required to give notice within a reasonable period of time. Reasonableness shall be determined in accordance with the nature of circumstances of the emergency. The City shall have the right to enter any of the above described easement areas without prior written notification for the purposes of monitoring and inspection only.
4. Breach Does Not Permit Termination. Notwithstanding anything to the contrary contained herein, no breach of this Restrictive Covenant entitles the Declarant or any Owner to cancel, rescind or otherwise terminate this Restrictive Covenant, but such limitations do not affect in any manner any other rights or remedies which the Declarant or any Owner may have hereunder by reason of any breach of this Restrictive Covenant.
5. Excusable Delays. Whenever performance is required of any Owner hereunder, the Owner shall use all due diligence to perform and take all reasonable and necessary measures in good faith to perform; provided, however, that if completion of performance is delayed at any time by reasons of acts of God, war, civil commotion, riots, strikes, picketing, or other labor disputes, unavailability of labor or material, damage to work in progress by reason of fire or other casualty, or any other cause beyond the reasonable control of the Owner (financial inability, imprudent management or negligence excepted), then the time for performance as herein specified will be extended by the amount of delay actually so caused.

6. Existing Encumbrances. The easement and other rights granted or created by this Restrictive Covenant are subject to any and all matters of record affecting the Property.

7. General Provisions.

A. Inurement. This Restrictive Covenant and the restrictions created hereby inure to the benefit of and bind the Declarant and the Owners, and their successors and assigns. When an Owner conveys all or any portion of the Property, the Owner will thereupon be released and discharged from any and all further obligations, if any, under this Restrictive Covenant that it had in connection with the Property conveyed by it from and after the date of recording of such conveyance, but no such sale releases that Owner from any liabilities, if any, actual or contingent, existing as of the time of such conveyance.

B. Duration. Unless terminated in accordance with Paragraph 7.K below, this Restrictive Covenant remains in effect in perpetuity.

C. Non-Merger. This Restrictive Covenant will not be subject to the doctrine of merger, even though the underlying fee ownership of the Property, or any parts thereof, is vested in one party or entity.

D. Severability. The provisions of this Restrictive Covenant must be deemed to be independent and severable, and the invalidity or partial invalidity of any provision or portion hereof does not affect the validity or enforceability of any other provision.

E. Entire Agreement. This Restrictive Covenant, and the exhibits attached hereto, contain all the representations and the entire agreement between the parties to this Restrictive Covenant with respect to the subject matter hereof. Any prior correspondence, memoranda or agreements are superseded in total by this Restrictive Covenant and the exhibits attached hereto. The provisions of this Restrictive Covenant will be construed as a whole according to their common meaning and not strictly for or against any Owner.

F. Captions. The captions preceding the text of each section and subsection hereof are included only for convenience of reference and will be disregarded in the construction and interpretation of this Restrictive Covenant.

G. Governing Law; Place of Performance. This Restrictive Covenant and all rights and obligations created hereby will be governed by the laws of the State of Texas. This Restrictive Covenant is performable only in the county in Texas where the Property is located.

H. Notices. Any Notice to the Owner, Declarant, any Owner or the City must be in writing and given by delivering the same to such party in person, by expedited, private carrier services (such as Federal Express) or by sending the same by certified mail, return receipt requested, with postage prepaid to the intended recipient's last known mailing address. All notices under this Restrictive

Covenant will be deemed given, received, made or communicated on the date personal delivery is effected or, if mailed, on the delivery date or attempted delivery date shown on the return receipt.

I. Negation of Partnership. None of the terms or provisions of this Restrictive Covenant will be deemed to create a partnership between or among the Declarant, any Owner, or the City of Austin, Texas in their respective businesses or otherwise; nor will it cause them to be considered joint venturers or members of any joint enterprise.

J. Enforcement. If any person, persons, corporation, or entity of any other character, violates or attempts to violate this Restrictive Covenant, it is lawful for the Owners or the City of Austin, Texas, its successors and assigns, to prosecute proceedings at law, or in equity, including specific performance, against the person, or entity violating or attempting to violate such covenant and to prevent the person or entity from violating or attempting to violate such covenant. The failure at any time to enforce this Restrictive Covenant by the City of Austin, Texas, its successors and assigns, whether any violations hereof are known or not, does not constitute a waiver or estoppel of the right to do so.

K. Modification and Amendment. This Restrictive Covenant may only be modified, amended or terminated upon the filing of such modification, amendment or termination in the Official Records of Travis County, Texas, executed, acknowledged and approved by (a) the Director of the Watershed Protection and Development Review Department of the City of Austin, or successor department; (b) a majority of the Board of Directors of the Owner at the time of such modifications, amendment or termination; and (c) the Owners of the Easement Tract.

Executed to be effective on the date first above stated.

**DECLARANT:**

**RIVERSIDE INTERESTS, L.P.**, a Texas  
limited partnership, acting by and through  
its Member, Tames Partners, LLC, a Texas  
limited liability company

Tames Partners, LLC

By: \_\_\_\_\_  
Name: Carlos Tames  
Title: Member

STATE OF \_\_\_\_\_ §

COUNTY OF \_\_\_\_\_ §

Before me on this day personally appeared Carlos Tames, known to me to be the person whose name is subscribed to the foregoing instrument and acknowledged to me that he executed the same as Member of Tames Partners, LLC, a Texas limited liability company member, as the act of **RIVERSIDE INTERESTS, L.P.**, a Texas limited partnership for the purposes and consideration therein expressed.

Given under my hand and seal of office on \_\_\_\_\_, 20\_\_.

\_\_\_\_\_  
Notary Public, State of Texas

ACCEPTED: WATERSHED PROTECTION AND  
DEVELOPMENT REVIEW DEPARTMENT

CITY OF AUSTIN

By: \_\_\_\_\_

Name: \_\_\_\_\_

Title: \_\_\_\_\_

APPROVED AS TO FORM:

City of Austin  
Law Department

\_\_\_\_\_  
James M. Williams, Sr.  
Assistant City Attorney  
Texas State Bar Number 21549500

## Exhibit A to Restrictive Covenant

### Legal Description of the Property

**BEGINNING** at an iron rod found being the most Northerly corner of the said 4.468 acre tract of land and being a point on the Eastern **RIGHT-OF-WAY** of Willow Creek Drive and a point on the Southern **R-O-W** of Riverside Drive, point being the **POINT-OF-BEGINNING** of the herein described tract of land;

**Thence** following the said southern **R-O-W** of Riverside Drive and following a curve to the left having a chord bearing of  $S30^{\circ}51'58''E$ , a radius of 995.60 feet, a length of 78.91 feet and a chord distance of 78.89 feet to an iron rod set;

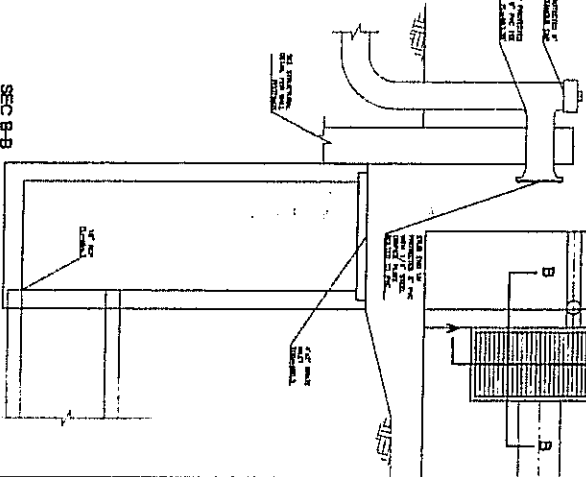
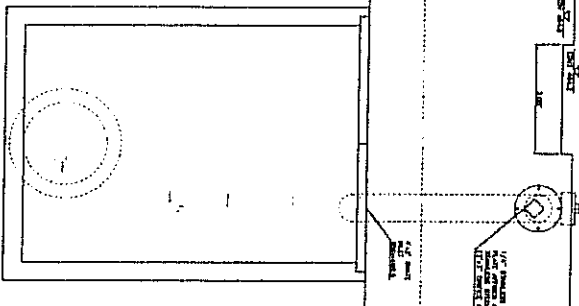
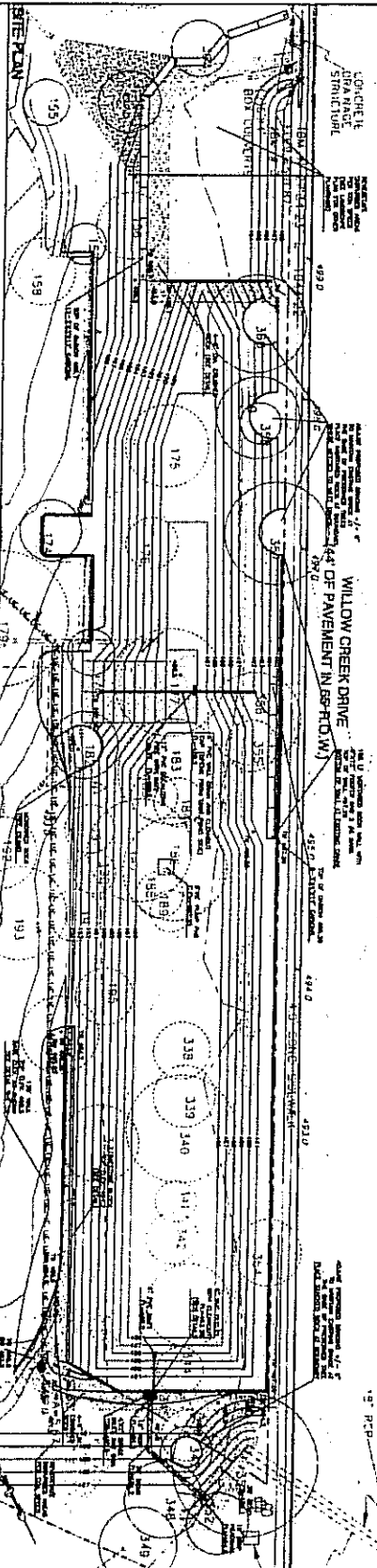
**Thence**  $S44^{\circ}31'57''E$  for a distance of 135.32 feet to an iron rod set, being the Northeast corner of the said 4.468 acre tract of land and point being the Northwest corner of that certain 9.733 acre of land conveyed to Collier Ranch Limited Partnership as recorded in Volume 13336, Page 764, of the official public records of Travis County, Texas;

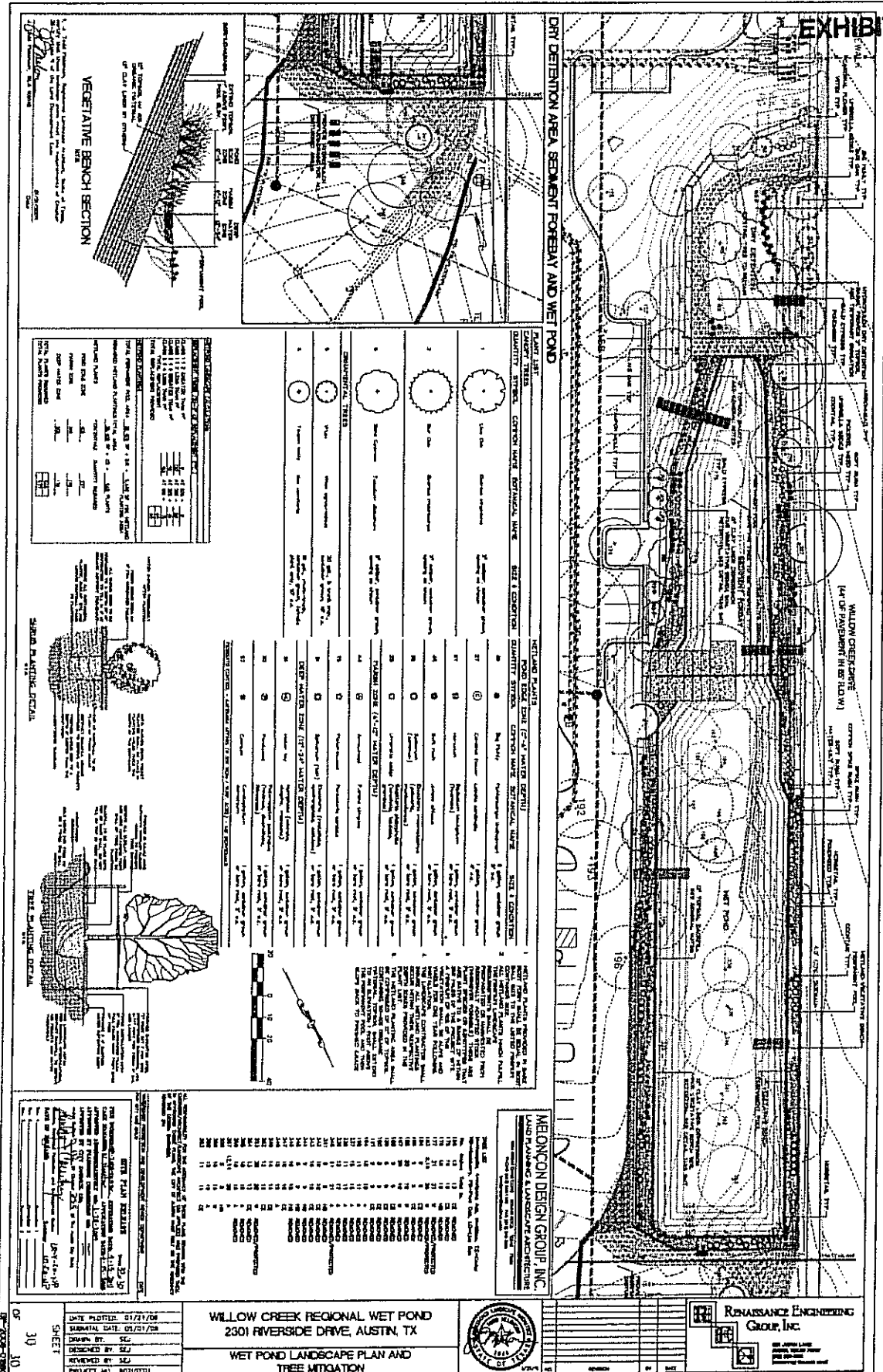
**Thence**  $S27^{\circ}41'57''W$  following the common property line of the said 4.468 acre tract of land and said 9.733 acre tract of land for a distance of 962.49 feet to an iron rod set being the most Southerly corner of the said 4.468 acre tract of land and being on the Northern property line of that certain Willow Creek Subdivision Section 1-b as recorded in Volume 52 Page 18, of the official public records of Travis County, Texas;

**Thence**  $N62^{\circ}18'03''W$  following the common property line of the said 4.468 acre tract of land and the said Willow Creek Section 1-b, for a distance of 194.31 feet to an iron rod found being the most Westerly corner of the said 4.468 acre tract of land and being on the said **R-O-W** of Willow Creek Drive;

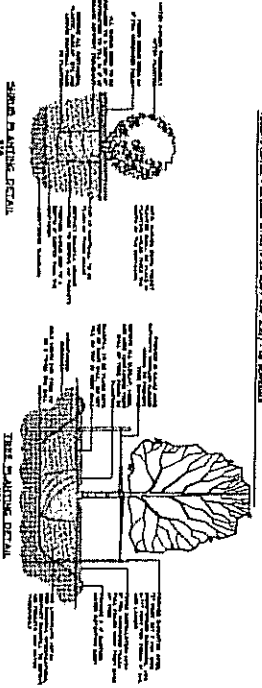
**Thence**  $N27^{\circ}35'48''E$  following the said **R-O-W** of Willow Creek Drive for a distance of 1044.93 feet to the **POINT-OF-BEGINNING** containing 4.468 acres of land more or less.

**SEC B-B**

[illegible][illegible]



PLANT LIST			INLAND PLANTS		
COMMON NAME	SCIENTIFIC NAME	SIZE & LOCATION	FOOD FOR INSECT (P-N-MATER CONTENT)	DEATH STRIPS	NOTE & LOCATION
1	Blackberry	10' x 10'	100%	100%	100%
2	Blackberry	10' x 10'	100%	100%	100%
3	Blackberry	10' x 10'	100%	100%	100%
4	Blackberry	10' x 10'	100%	100%	100%
5	Blackberry	10' x 10'	100%	100%	100%
CAMPAIGNAL TREES					
6	Blackberry	10' x 10'	100%	100%	100%
7	Blackberry	10' x 10'	100%	100%	100%
8	Blackberry	10' x 10'	100%	100%	100%
9	Blackberry	10' x 10'	100%	100%	100%
10	Blackberry	10' x 10'	100%	100%	100%
11	Blackberry	10' x 10'	100%	100%	100%
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93	Blackberry	10' x 10'	100%	100%	100%
94	Blackberry	10' x 10'	100%	100%	100%
95	Blackberry	10' x 10'	100%	100%	100%
96	Blackberry	10' x 10'	100%	100%	100%
97	Blackberry	10' x 10'	100%	100%	100%
98	Blackberry	10' x 10'	100%	100%	100%
99	Blackberry	10' x 10'	100%	100%	100%
100	Blackberry	10' x 10'	100%	100%	100%

[illegible]

THE BOARDMAN-IRVING CO., CONTRACTORS, 1415 3rd  
FLOOR, BOARDMAN, ILLINOIS  
ATTENDING LABORERS' MEETING ON 11/15/32  
RECEIVED BY CITY ENGINEER, CHICAGO  
DATE 11/15/32 BY 205 OF THE CHIEF OF POLICE  
Karl von Reichen  
L-57-42-119  
11/15/32

ALL INFORMATION CONTAINED HEREIN IS UNCLASSIFIED  
DATE 11-19-01 BY 60322 UCBAW

[illegible]

MEMORANDUM FOR THE RECORD

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**ALFA ROMEO**

THE  
NEW YORK  
PUBLIC  
LIBRARY  
ASTOR LENOX  
TILDEN FOUNDATION  
125 WEST 47TH STREET  
NEW YORK 19, N. Y.

THE UNIVERSITY OF CHICAGO

AMERICAN TYPE

SHEET 30	DATE PLOTTED: 01/21/08
	SUBMITAL DATE: 01/01/08
	DRAWN BY: SCS
	DESIGNED BY: SCS
	REVIEWED BY: SCS
	PROJECT NO: 00107071

WILLOW CREEK REGIONAL WET POND  
2301 RIVERSIDE DRIVE, AUSTIN, TX

WET POND LANDSCAPE PLAN AND  
TREE MITIGATION

[illegible]

## LIENHOLDER CONSENT TO GRANT OF RESTRICTIVE COVENANT

STATE OF TEXAS           §

COUNTY OF TRAVIS       §

### Recitals:

**Riverside Interests, L.P.**, a Texas limited partnership, is the Owner (called "Owner", whether one or more) of the following property:

Being all of that certain 4.468 acre tract of land, more or less, out of the SANTIAGO DEL VALLE GRANT situated in Travis County, Texas, the same being conveyed to Riverside Interests, LP by Warranty Deed dated February 9, 2007, recorded under Document No. 2007024954 of the Official Public Records of Travis County, Texas. Said 4.468 acre tract of land being more particularly described by metes and bounds on Exhibit "A" attached hereto (the "Property").

**PlainsCapital Bank** ("Lienholder") holds a lien against the Property under the following described documents:

Deed of Trust dated February 9, 2007, from **Riverside Interests, L.P.** to **Paul Holubee**, Trustee, securing the payment of one promissory note of even date in the original principal amount of \$965,000.00, payable to **PlainsCapital Bank**, of record in Document Number 2007024955, of the Official Public Records of Travis County, Texas.

**Owner** has granted to the City of Austin ("City") a Restrictive Covenant Regarding the Maintenance of Wet Pond and Drainage Facilities against and running with the Property (the "Restrictive Covenant").

### Agreement

In consideration of \$10, and other good and valuable consideration, the receipt of which is acknowledged, the Lienholder agrees as follows:

1. **PlainsCapital Bank** consents to the grant of the Restrictive Covenant against and running with the Property, which is executed contemporaneously herewith.
2. **PlainsCapital Bank** subordinates all of its liens on this Property to the rights and interests of the City, its successors and assigns, and any foreclosure of its liens will not extinguish City's rights and interests in the Restrictive Covenant or the Property.



**3. PlainsCapital Bank** affirms that the undersigned has the authority to bind the Lienholder, and that all corporate acts necessary to bind the Lienholder have been taken.

Executed on \_\_\_\_\_, 2009.

**PlainsCapital Bank**  
**Texas Commercial Bank**

By: \_\_\_\_\_

Name: \_\_\_\_\_

Title: \_\_\_\_\_

#### ACKNOWLEDGMENT

STATE OF \_\_\_\_\_ §  
COUNTY OF \_\_\_\_\_ §

Before me, the undersigned Notary Public, on this day personally appeared \_\_\_\_\_, \_\_\_\_\_ of PlainsCapital Bank, a Texas bank, known to me personally to be the person whose name is subscribed to the foregoing instrument and acknowledged that he executed the same for the purposes and consideration therein expressed.

Given under my hand and seal of office this \_\_\_\_ day of \_\_\_\_\_, 2009.

\_\_\_\_\_  
Notary Public, State of \_\_\_\_\_

#### AFTER RECORDING, RETURN TO:

City of Austin  
Watershed Protection and Development Review  
P.O. Box 1088  
Austin, Texas 78767  
Project Name: 2301 Riverside Drive  
Attn: \_\_\_\_\_ [Project Manager]  
Case No. \_\_\_\_\_

**Exhibit A to Lienholder Consent**

**Legal Description of the Property**


**BEGINNING** at an iron rod found being the most Northerly corner of the said 4.468 acre tract of land and being a point on the Eastern **RIGHT-OF-WAY** of Willow Creek Drive and a point on the Southern **R-O-W** of Riverside Drive, point being the **POINT-OF-BEGINNING** of the herein described tract of land;

**Thence** following the said southern **R-O-W** of Riverside Drive and following a curve to the left having a chord bearing of  $S30^{\circ}51'58''E$ , a radius of 995.60 feet, a length of 78.91 feet and a chord distance of 78.89 feet to an iron rod set;

**Thence**  $S44^{\circ}31'57''E$  for a distance of 135.32 feet to an iron rod set, being the Northeast corner of the said 4.468 acre tract of land and point being the Northwest corner of that certain 9.733 acre of land conveyed to Collier Ranch Limited Partnership as recorded in Volume 13336, Page 764, of the official public records of Travis County, Texas;

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**Thence**  $N62^{\circ}18'03''W$  following the common property line of the said 4.468 acre tract of land and the said Willow Creek Section 1-b, for a distance of 194.31 feet to an iron rod found being the most Westerly corner of the said 4.468 acre tract of land and being on the said **R-O-W** of Willow Creek Drive;

**Thence**  $N27^{\circ}35'48''E$  following the said **R-O-W** of Willow Creek Drive for a distance of 1044.93 feet to the **POINT-OF-BEGINNING** containing 4.468 acres of land more or less. 

## **EXHIBIT E**

### **Insurance and Bond Requirements**

**Developer: Riverside Interests, L.P.**  
**Agreement: Community Facilities and Cost Reimbursement Agreement for Wet Pond Improvements**

#### **A. General Requirements**

Developer shall forward certificates of insurance with the endorsements required below to the City as verification of coverage prior to commencement of any professional or construction services hereunder, EXCEPT that Developer shall have in place a policy of commercial general liability insurance meeting the requirements of this Agreement commencing on the Effective Date. To the extent that the specific endorsements referenced herein are unavailable or that equivalent endorsements are available, the substitution of equivalent endorsements will be permitted subject to the approval of the City.

Developer shall not commence work until the required insurance is obtained and has been reviewed by the City. Approval of insurance by the City does not relieve or decrease the liability of Developer hereunder and is not a limitation of liability on the part of Developer.

Developer must submit certificates of insurance for all contractors and/or subcontractors to the City prior to the commencement of design or construction work on the Improvements and the City will review and approve the certificates, which comply with the requirements of this Agreement, within five days of receipt.

Developer's and all contractor's and subcontractor's insurance coverage must be written by companies licensed to do business in the State of Texas at the time the policies are issued and must be written by companies with A.M. Best ratings of B+VII or better.

All endorsements naming the City as additional insured, waivers, and notices of cancellation endorsements as well as the Certificate of Insurance must contain the following information:

City of Austin  
Watershed Protection and Development review Department  
Attn: Environmental Resource Management(Tom Franke)  
P. O. Box 1088  
Austin, Texas 78767

The "other" insurance clause must not apply to the City where the City is an additional insured shown on any policy. It is intended that policies required in this Agreement, covering both the City and Developer, be considered primary coverage as applicable.

If insurance policies are not written for amounts specified in this Agreement, Developer, contractors and subcontractors must carry umbrella or excess liability insurance for any differences in amounts specified. If excess liability insurance is provided, it must follow the form of the primary coverage.

The City shall be entitled, upon request and without expense, to receive certified copies of policies and endorsements thereto and may make any requests for deletion or revision or modification of particular policy terms, conditions, limitations, or exclusions except where policy provisions are established by law or regulations binding upon either of the parties hereto or the underwriter on any such policies.

Developer shall not cause any insurance to be canceled nor permit any insurance to lapse during the term of this Agreement.

Developer and any contractor or subcontractor responsible for maintaining insurance shall be responsible for premiums, deductibles and self-insured retentions, if any, stated in policies. All deductibles or self-insured retentions must be disclosed on the certificate of insurance.

The City may review the insurance requirements set forth herein during the Term and may make adjustments to insurance coverages, limits, and exclusions when deemed necessary and prudent by the City based upon applicable changes in statutory law, court decisions, the claims history of the industry or financial condition of the insurance company(ies) and Developer.

The insurance coverages specified below are required minimums and are not intended to limit the responsibility or liability of Developer.

#### B. Specific Requirements

Worker's Compensation and Employers' Liability Insurance. Coverage must be consistent with statutory benefits outlined in the Texas Worker's Compensation Act. The minimum policy limits for Employer's Liability are \$1,000,000 bodily injury each accident, \$1,000,000 bodily injury by disease policy limit and \$1,000,000 bodily injury by disease each employee.

- (a) Developer's, its contractor's and subcontractor's policy shall apply to the State of Texas and include these endorsements in favor of the City:
  - (i) Waiver of Subrogation, Form WC 420304
  - (ii) Thirty days Notice of Cancellation, Form WC 420601

Commercial General Liability Insurance. The minimum bodily injury and property damage per occurrence are \$1,000,000 for coverages A and B.

- (a) The policy must contain the following provisions:
  - (i) Blanket contractual liability coverage for liability assumed under this contract and all contracts related to this project.

- (ii) Independent contractor's coverage.
  - (iii) Products/completed operations liability for the duration of the warranty period.
  - (iv) X, C & U coverage.
- (b) The policy must also include these endorsements in favor of the City:
- (i) Waiver of Subrogation, endorsement CG 2404
  - (ii) Thirty days notice of cancellation, endorsement CG 0205
  - (iii) The City listed as an additional insured, endorsement CG 2010

Business Automobile Liability Insurance. Developer, its contractor and subcontractor shall provide coverage for all owned, non-owned and hired vehicles with a minimum combined single limit of \$1,000,000 per occurrence for bodily injury and property damage,

- (a) The policy must include these endorsements in favor of the City of Austin:
- (i) Waiver of subrogation, endorsement TE 2046A
  - (ii) Thirty days notice of cancellation, endorsement TE 0202A
  - (iii) The City listed as an additional insured, endorsement TE 9901B

Property Insurance. If any of the City's property is in the care, custody or control of Developer, then Developer shall provide property coverage on an "all risk of physical loss" form. The coverage must be provided on a replacement cost basis for the 100% value of the City's property. If property is being transported or stored off site by Developer, then transit and storage coverage must also be provided. The City shall be endorsed onto the policy as a loss payee.

Hazardous Material Insurance. If applicable, for work that involves asbestos or any hazardous materials or pollution defined as asbestos, any contractor or subcontractor responsible for such work must comply with the following insurance requirements in addition to those specified above:

- (a) Provide an asbestos abatement endorsement to the commercial general liability policy with minimum bodily injury and property damage limits of \$1,000,000 per occurrence for coverages A&B and products/completed operations coverage with a separate aggregate of \$1,000,000. This policy must not exclude asbestos or any hazardous materials or pollution defined as asbestos, and must provide "occurrence" coverage without a sunset clause. The policy must provide 30 day notice of cancellation and waiver of subrogation endorsements in favor of Developer and The City.

- (b) Any contractor or subcontractor responsible for transporting asbestos or any hazardous materials defined as asbestos shall provide pollution coverage. Federal law requires interstate or intrastate transporters of asbestos to provide an MCS 90 endorsement with a \$5,000,000 limit when transporting asbestos in bulk in conveyances of gross vehicle weight rating of 10,000 pounds or more. Interstate transporters of asbestos in non-bulk in conveyances of gross vehicle weight rating of 10,000 pounds or more must provide an MCS 90 endorsement with a \$1,000,000 limit. The terms "conveyance" and "bulk" are defined by Title 49 CFR 171.8. All other transporters of asbestos shall provide either an MCS 90 endorsement with minimum limits of \$1,000,000 or an endorsement to their Commercial General Liability Insurance policy which provides coverage for bodily injury and property damage arising out of the transportation of asbestos. The endorsement must, at a minimum, provide a \$1,000,000 limit of liability and cover events caused by the hazardous properties of airborne asbestos arising from fire, wind, hail, lightening, overturn of conveyance, collision with other vehicles or objects, and loading and unloading of conveyances.
- (c) The contractor shall submit complete copies of the policy providing pollution liability coverage to Developer and the City.

Performance and Payment Bonds. In substantial compliance with the provisions of Chapter 2253 of the Texas Government Code, Developer shall require its general contractor, within 30 days from and after notification of the award of the contract to furnish and deliver to the City, legally issued surety bonds in a form approved by the City, with the City and Developer named as co-obligees. The furnishing and delivery of such bonds within the periods mentioned is a condition precedent to the commencement of the construction of the Improvements and, upon the failure of the general contractor to so furnish and deliver all of the same in form, tenor and execution and with sureties satisfactory to the City, no rights obtain thereunder to Contractor, no construction of the Improvements may commence or continue and, if construction has commenced without compliance with the requirements of this paragraph, all construction activities must immediately be suspended and Developer will be in material default under this Agreement.

Payment Bond. Developer shall require the general contractor to provide a payment surety bond legally issued, meeting the approval of the City Law Department, in an amount not less than 100% of the total contract price of the Construction Costs, conditioned upon the prompt, full, and complete payment of all subcontractors and suppliers.

Performance Bond. Developer shall require contractor to provide a performance surety bond legally issued, meeting the approval of the City Law Department, in an amount not less than 100% of the total contract price of the Construction Costs, conditioned upon the prompt, full and complete performance by the general contractor of these covenants and agreements contained in the contract documents.

Capitalized terms used in this exhibit unless otherwise defined in this exhibit have the meanings set forth in the Agreement.

**EXHIBIT F-1****City of Austin Cost Participation**

City costs for a privately maintained regional wetpond located at 2301 East Riverside Drive.

**Watershed Characteristics**

Off-Site Watershed Area	103.01	ac
Site Area	4.23	ac
Site Impervious Cover	3.30	ac
Pervious Area Curve Number	73.00	CN

**Pond Characteristics**

Extended Detention Vol	19,012	cf
Total Pond Volume	139,276	cf

extended detention to slow velocities into pond  
total forebay, main pool, and extended detention  
volume

**Estimated Pond Costs**

Construction Costs	\$488,467
Design Engineering	\$78,155
Admin of Contract/Bidding Const Phase	\$19,539
Construction Inspection Fee	\$23,473
Phasing Fee	\$885
Total	<b>\$610,519</b>

The eligible costs for reimbursement under this agreement will include the costs of construction, design fees, permit and inspection fees, construction management fee, and professional services fees.

**WET POND FACILITY CONTRACT****NOTE:**

Specification listed is not necessarily all inclusive of work description. Contractor shall use all applicable specifications (COA or TxDOT) to complete work.

Item	Specification	Estimated Quantity	Unit of Measure	Item Description	Unit Price	Extended Price
1	SS 04000	1	L.S.	TOTAL MOBILIZATION PAYMENT	\$15,000.00	\$15,000.00
2	102S-A	1.06	ACRE	CLEAR & GRUBBING	\$1,500.00	\$1,584.02
3	111S-B	2,800	C.Y.	EXCAVATION (INCLUDING DEWATERING)	\$20.00	\$56,000.00
4	132S-A	900	C.Y.	EMBANKMENT	\$10.00	\$9,000.00
5	SS 05000-A	1	L.S.	POND LINER (CLAY)	\$24,000.00	\$24,000.00
6	403	205.00	C.Y.	CONCRETE WALLS	\$800.00	\$164,000.00
7	403	1,146	S.F.	CONCRETE MAINTENANCE PADS	\$10.00	\$11,460.00
8	508S-H	2	EA.	OUTLET HEADWALL, 18" DIA. PIPE	\$2,500.00	\$5,000.00
9	508S	1	EA.	4'x2' GRATE INLET	\$2,800.00	\$2,800.00
10	510-A	30	L.F.	PIPE, PVC 6" DIA.	\$25.00	\$750.00
11	510-A	5	L.F.	PIPE, PVC, 12" DIA.	\$45.00	\$225.00
12	511S-A	1	EA.	CLEANOUT, ORIFICE PLATE, BENDS	\$1,000.00	\$1,000.00
13	511S-A	1	EA.	VALVE, PLUG, 12" DIA.	\$4,225.00	\$4,225.00
14	591-A	403.78	S.Y.	DRY ROCK RIPRAP SLOPE PROTECTION	\$30.00	\$12,113.33
15	623	140.00	L.F.	DRY STACK ROCK AT TREES	\$10.00	\$1,400.00
16	602S-A	433	S.Y.	BERMUDA BLOCK SODDING	\$9.00	\$3,900.00
17	604S-A	789	S.Y.	NON-NATIVE SEEDING FOR EROSION CTL	\$0.50	\$394.44
18	642S	350	L.F.	SILT FENCE FOR EROSION CONTROL	\$2.00	\$700.00
19	701-A	1,700	L.F.	LIMITS OF CONSTR SAFETY FENCING	\$3.00	\$5,100.00
20	802S-B	1	EA.	PROJECT SIGN (TYPE II)	\$800.00	\$800.00
21	SS 02000-A	4	EA.	ANTI-SEEP COLLAR	\$100.00	\$400.00
22	SS 02441	1	L.S.	IRRIGATION SYSTEM	\$30,000.00	\$30,000.00
23	SS 2490-VI	5	EA.	VITEX - 20 GAL.	\$200.00	\$1,000.00
24	SS 2490-YH	5	EA.	YAUPON HOLLY - 10 GAL.	\$200.00	\$1,000.00
25	SS 2490-LO	2	EA.	LIVE OAK - 3 CAL. IN.	\$550.00	\$1,100.00
26	SS2490-BO	3	EA.	BURR OAK - 3 CAL. IN.	\$600.00	\$1,800.00
27	SS 2490-BC	10	EA.	BALD CYPRESS - 3 CAL. IN.	\$700.00	\$7,000.00
28	SS 2490-TA	3	EA.	TEXAS ASH - 3 CAL. IN.	\$500.00	\$1,500.00
29	SS 2491-BM	48	EA.	BIG MUHLY	\$20.00	\$960.00
30	SS 2491-CF	27	EA.	CARDINAL FLOWER	\$20.00	\$540.00
31	SS 2491-HT	57	EA.	HORSETAIL	\$20.00	\$1,140.00
32	SS 2491-SR	49	EA.	SOFT RUSH	\$20.00	\$980.00
33	SS 2491-SRC	33	EA.	SPIKERUSH (COMMON)	\$20.00	\$660.00
34	SS 2491-US	23	EA.	UMBRELLA SEDGE	\$20.00	\$460.00
35	SS 2491-AH	64	EA.	ARROWHEAD	\$20.00	\$1,280.00
36	SS 2491-PW	75	EA.	PICKERERLWEED	\$20.00	\$1,500.00
37	SS 2491-SRT	31	EA.	SPIKERUSH (TALL)	\$20.00	\$620.00
38	SS 2491-WL	81	EA.	WATER LILY	\$20.00	\$1,620.00
39	SS 2491-CT	32	EA.	POND WEED	\$20.00	\$640.00
40	SS 2491-ACT	57	EA.	COON-TAIL	\$20.00	\$1,140.00
41	SS 2491-C	1	L.S.	STOCK WET POND W/140 MESQUITO FISH	\$800.00	\$800.00
42	623S	330.0	S.F.	MORTARED ROCK WALL	\$35.00	\$11,550.00
43	639S	12	L.F.	ROCK BERM	\$20.00	\$240.00
44	594S	128	CY	GABIONS (12'X3'X4')	\$140.00	\$17,920.00
45	510S	179	L.F.	18" RCP	\$120.00	\$21,480.00
46	430S	1	EA.	SPECIAL CURBING/WALL ALONG ROCK WEIR	\$6,800.00	\$6,800.00
47	623S	1,316	S.F.	DECORATIVE FACING FOR CONCRETE WALL	\$5.00	\$6,579.50
48	701-B	195	L.F.	METAL FENCE AT PARKING	\$20.00	\$3,900.00
				<b>TOTAL AMOUNT BID</b>		<b>\$444,061.30</b>
				CONTINGENCY FOR COST OVERRUNS	10%	\$44,406.13
				<b>GRAND TOTAL</b>		<b>\$488,467.43</b>





EASE 2009010703  
7 PGS

**DRAINAGE EASEMENT**

**ORIGINAL  
FILED FOR RECORD**

**THE STATE OF TEXAS   §  
                                  §  
COUNTY OF TRAVIS   §**

Riverside Interests, LP of Travis County, Texas, whose mailing address is 2110 South Lamar, Suite H, Austin, Texas 78741, (called "Grantor", whether one or more), in consideration of the sum of \$10.00 and other good and valuable consideration to Grantors in hand paid, by the City of Austin, the receipt and sufficiency of which is acknowledged, have this day **GRANTED** and **CONVEYED** and by these presents do **GRANT** and **CONVEY** unto the City of Austin, a municipal corporation situated in the Counties of Hays, Travis and Williamson and whose address is P.O. Box 1088, Austin, Travis County, Texas, 78767-8839, Attention: Watershed Protection and Development Review Department, a drainage easement to construct, operate, maintain, repair, replace and upgrade a drainage channel and related facilities in, under, and across the following described property, together with the right to make connections therewith:

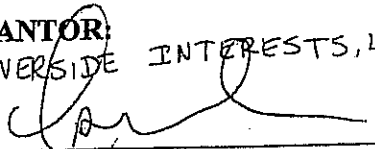
All that parcel of land, situated in Travis County, Texas, described in the attached **EXHIBIT "A"** and made a part hereof for all purposes ("Property").

**TO HAVE AND TO HOLD** the same perpetually to the City of Austin, its successors and assigns, together with the right and privilege at any and all times to enter all or part of the Property to construct, operate, maintain, replace, upgrade and repair the drainage channel and related facilities and to make connections with the drainage channel and facility.

**GRANTOR** does hereby bind themselves, their heirs, successors, assigns and legal representatives to warrant and forever defend all and singular the drainage easement and all related rights unto the said Grantee, its successors and assigns, against every persons whomsoever lawfully claiming or to claim the same or any part thereof.

Executed JANUARY 14, 2009.

**GRANTOR:**  
RIVERSIDE INTERESTS, LP

  
\_\_\_\_\_  
**NAME (Signed)**

Carlos Tames  
\_\_\_\_\_  
**NAME (Typed)**

STATE OF TEXAS §

COUNTY OF TRAVIS §

Before me Susan L. Hartman, Notary Public, on this day personally appeared Carlos Tames, President of Riverside Interests, a Limited Partnership, known to me to ~~through~~ personally "either insert state and driver's license number or delete word ~~through~~ and insert personally" to be the person whose name is subscribed to the foregoing instrument and acknowledged that he executed the same for the purposes and consideration therein expressed.

Given under my hand and seal of office on January 16, 2009.

Susan L. Hartman

ACCEPTED: WATERSHED PROTECTION AND  
DEVELOPMENT REVIEW DEPARTMENT



CITY OF AUSTIN

By: [Signature]  
Name: BENNY HO  
Title: Engineer C

APPROVED AS TO FORM:

By: [Signature]

AFTER RECORDING, RETURN TO:

City of Austin  
Watershed Protection and Development Review Department  
P.O. Box 1088  
Austin, Texas 78704-67 <sup>HW</sup>  
Case Manager: ~~Donna~~ Nikki Hoelter  
Project Name: 2301 Riverside Drive  
Case No.: SP-2008-0188C

## LIENHOLDER CONSENT TO GRANT OF DRAINAGE EASEMENT

STATE OF TEXAS           §

COUNTY OF TRAVIS       §

### Recitals:

**Riverside Interests, LP**, is the Owner (called "Owner", whether one or more) of the following property:

That tract of land situated in Travis County, Texas described in the attached and incorporated **EXHIBIT "A"** ("Property").

**PlainsCapital Bank** ("Lienholder") holds a lien against the Property under the following described documents:

Deed of Trust dated **February 9, 2007**, from **Riverside Interests, LP** to **Paul Holubee**, Trustee, securing the payment of one promissory note of even date in the original principal amount of \$965,000.00, payable to **PlainsCapital Bank**, of record in Document Number **2007024955**, of the Official Public Records of Travis County, Texas.

**Owner** has granted to the City of Austin ("City") a Drainage Easement against and running with the Property.

### Agreement

In consideration of \$10.00, and other good and valuable consideration, the receipt of which is acknowledged, the Lienholder agrees as follows:

1. **PlainsCapital Bank** consents to the grant of Drainage Easements against and running with the Property, which is executed contemporaneously herewith.
2. **PlainsCapital Bank** subordinates all of its liens on this Property to the rights and interests of the City, its successors and assigns, and any foreclosure of its liens will not extinguish City's rights and interests in the Drainage Easements or the Property.

3. PlainsCapital Bank affirms that the undersigned has the authority to bind the Lienholder, and that all corporate acts necessary to bind the Lienholder have been taken.

Executed on January 16, 2009

PlainsCapital Bank  
Texas Commercial Bank

By: [Signature]  
Name: Alan Nirenberg  
Title: Sr. Vice President

ACKNOWLEDGMENT

STATE OF Texas §  
COUNTY OF Travis §

Before me, the undersigned Notary Public, on this day personally appeared Alan Nirenberg, Sr. Vice President of PlainsCapital Bank, a Texas bank known to me personally to be the person whose name is subscribed to the foregoing instrument and acknowledged that [insert letter s in front word 'he' if person signing is female] he executed the same for the purposes and consideration therein expressed.

Given under my hand and seal of office this 16<sup>th</sup> day of January, 2009



[Signature]  
Notary Public, State of Texas

AFTER RECORDING, RETURN TO:

City of Austin  
Watershed Protection and Development Review Department  
P.O. Box 1088  
Austin, Texas 78767  
Project Name: 2301 Riverside Drive  
Attn: ~~Brian H~~ NIKK HOELTER [Project Manager]  
Case No. SP-2008-0188C

Exhibit "A"

Riverside Interests LP  
To  
City of Austin  
(Drainage Easement)

### LEGAL DESCRIPTION

BEING A CALCULATED MAP AREA OF 0.969 ACRE OUT OF THE SANTIAGO DEL VALLE GRANT IN TRAVIS COUNTY, TEXAS, AND BEING PART OF THAT CERTAIN TRACT OF LAND CONVEYED TO RIVERSIDE INTERESTS LP (THE GRANTOR HEREIN) BY DEED RECORDED IN DOCUMENT NO. 2007024954 OF THE TRAVIS COUNTY OFFICIAL PUBLIC RECORDS, AND BEING DESCRIBED BY METES AND BOUNDS AS FOLLOWS:

Beginning for reference at a ½" rebar found on the south right-of-way line of East Riverside Drive, at the northeast corner of said Riverside Interests LP tract of land, also the northwest corner of the Collier Ranch Limited Partnership 9.733 acres described in Volume 13336, Page 764 of the Travis County Real Property Records;

THENCE with the south right-of-way line of East Riverside Drive, N 44°48'28" W 107.64 feet to a calculated point, for the northeast corner and PLACE OF BEGINNING hereof;

THENCE, crossing through said Riverside Interests LP tract of land, the following six courses (all angle points are calculated points):

- 1) with a curve to the left having a radius of 98.15 feet and a length of 41.58 feet with a chord bearing of S 45°54'20" W 41.27 feet;
- 2) S 27°41'06" W 169.29 feet;
- 3) S 31°7'14" W 69.20 feet;
- 4) S 27°43'12" W 149.95 feet;
- 5) S 37°3'03" W 78.42 feet;
- 6) N 85°5'48" W 68.55 feet to a point on the east right-of-way line of Willow Creek Drive, also the west line of said Riverside Interests LP tract of land, for the southwest corner hereof;

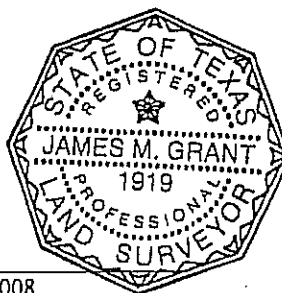
THENCE with the east right-of-way line of Willow Creek Drive, also the west line of said Riverside Interests LP tract of land, N 27°34'23" E 580.69 feet to a ½" rebar found on the south right-of-way line of East Riverside Drive, at the northwest corner of said tract of land, for the northwest corner hereof;

THENCE with the south right-of-way line of East Riverside Drive, also the north line of said Riverside Interests LP tract of land, the following two courses:

- 1) With a curve to the left having a radius of 995.60 feet and a length of 78.91 feet with a chord bearing of S 31°10'05" E 78.89 feet to a ½" rebar found at a point of tangency;
- 2) S 44°48'28" E 28.02 feet to the PLACE OF BEGINNING and containing a calculated map area of 0.969 acre of land, more or less.

See sketch prepared to accompany this description.

Surveyed By: Harris-Grant Surveying, Inc.  
1700 South Lamar, Suite 332, Austin, Texas 78704  
(512) 444-1781



REFERENCES  
TCAD # 03-0607-01-01  
Austin Grid K-19

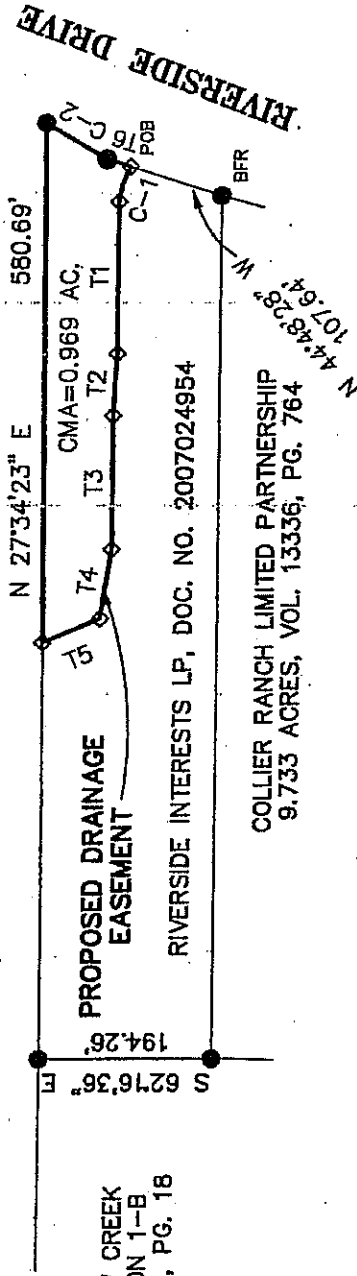
*James M. Grant*  
James M. Grant, RPLS 1919  
JG:\mydocs\m&b\2008\42719B

November 21, 2008

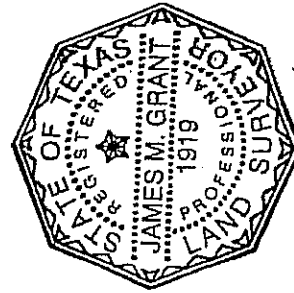
# SKETCH TO ACCOMPANY LEGAL DESCRIPTION FOR DRAINAGE EASEMENT

CURVE	RADIUS	DELTA	TANGENT	LENGTH	CHORD	BEARING
C-1	98.15'	24°16'30"	21.11'	41.58'	41.27'	S 45°54'20" W
C-2	995.60'	04°32'28"	39.48'	78.91'	78.89'	S 31°10'05" E

## WILLOW CREEK DRIVE



LINE	BEARING	LENGTH
T1	S 27°41'06" W	169.29'
T2	S 31°07'14" W	69.20'
T3	S 27°43'12" W	149.95'
T4	S 37°03'03" W	78.42'
T5	N 85°05'48" W	68.55'
T6	S 44°48'28" E	28.02'



1700 S. LAMAR, #332  
AUSTIN, TEXAS 78704  
(512)444-1781

*James M. Grant*  
JAMES M. GRANT, RPLS 1919

**Harris GRANT**  
SURVEYING, INC.

FILED AND RECORDED

OFFICIAL PUBLIC RECORDS

*Dana DeBeauvoir*

2009 Jan 26 08:41 AM 2009010703

BARTHOD \$40.00

DANA DEBEAUVOIR COUNTY CLERK

TRAVIS COUNTY TEXAS